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# SPEECH

IN THE

# HOUSE OF COMMONS,

ON

# TUESDAY the 7th of MARCH, 1786.

BY PHILIP FRANCIS, Esq.

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BRITISH MUSEUM

# HOUSE OF COMMONS,

*Tuesday, March 7th,* 1786.

## Mr. FRANCIS.

Mr. SPEAKER,

I RISE to move for leave to bring in a Bill to explain and amend an Act paſſed in the Year 1784, for the better regulation of the Eaſt-India Company's Affairs. I am deeply ſenſible, Sir, of the difficulty of the taſk I have undertaken. To move for the eſſential alteration of an Act of the Legiſlature, againſt the ſenſe of a Majority of this Houſe, and to encounter the abilities, which were employed in framing it, and which are likely to be exerted in defending it, is not an attempt, to *me* at leaſt, of inconſiderable magnitude.

I can very truly aſſure you, Sir, that if I were not thoroughly convinced that what I propoſe to do is neceſſary to be done; if I did not think myſelf bound by a ſpecial duty to make the attempt, and if I were not conſcious that my motives for making it were honeſt and upright, I ſhould neither have the confidence to undertake ſuch a labour, nor a degree of reſolution ſufficient to go through with it. The conſiderations, which have called me to this duty, will, I truſt, ſupport me in performing it. When I ſay that I have the ſenſe of a Majority of the Houſe to encounter, I mean to pay the greateſt tribute to their honour and to their juſtice; ſince I preſume and expect that they will nevertheleſs hear me with indulgence, that they will liſten to arguments oppoſed to their preſent impreſſions, and be led perhaps by the reflections, which ſuch arguments may ſuggeſt, to condemn and undo an Act of their own.

There is one preliminary word, including a ſolicitation, which I ſhall offer to the Houſe, and particularly to the Right Honourable Gentleman *, who brought in the

* Mr. Pitt.

Bill.

Bill. It is, that they would ſeparate and diſtinguiſh the ſubſtance of what I have to ſubmit to their conſideration from *my* manner of delivering it.—That the honourable Gentleman himſelf, if, thro' the diſorder and embarraſſment with which I may ſpeak, he can diſcover and collect the force and meaning of what I would expreſs, and if that meaning ſhould appear to him to deſerve conſideration, he will, in the firſt place, allow it due weight in his own mind; and then, if he ſhould think fit to anſwer me, that he will give my arguments the advantage of his own expreſſion, and encounter them in the armour with which he himſelf ſhall have inveſted them.—However he may diſregard perſonal invectives or perſonal attacks, he ought not to under-value any efforts, that are ſeriouſly employed in the diſcharge of a public duty.—It is the condition, perhaps the burthen of his ſtation, to liſten to all men with patience and attention, and to collect information wherever it can be found. Between the Honourable Gentleman and me there is no competition; and if

there were, it ought not to be decided by inequality of arms. In desiring the honourable Gentleman's assistance against himself, I certainly invite him to a conduct, that will do him honour. There is but one thing more honourable to the human character; and that, I am not without hopes, may be the result of this day's debate. If fortunately, from the reflections, which I mean to submit to the House, the honourable Gentleman's own measure should stand condemned or considerably impeached, in his own mind, I persuade myself that he will frankly acknowledge his conviction, and act upon it.

Before I enter upon the essential part of my task, there is an explanation to be stated to the House, external to the merits of the motion which I mean to make, yet materially connected with it. This explanation regards the time and circumstances, in which I act. It is matter of public notoriety, though not regularly before the House, that the India Bill was received in India a year ago with great discontent, and that petitions

titions againſt it were preparing to be ſent over to be laid before Parliament. On one ſide then I may be ſuſpected of a baſe intention to avail myſelf of the preſent temper of the diſcontented parties, for ſome miſchievous purpoſe; and, on the other, I may be charged with acting precipitately, and unfairly to the Petitioners themſelves, in not waiting for their petition. To the firſt imputation I ſay, that my oppoſition to almoſt every part of the Bill, but particularly to the Inquiſition and Judicature, was known and declared from the moment when it was introduced, and that I have invariably held the ſame language, and expreſſed the ſame ſentiments concerning it. My objections to the meaſure were no way connected with my opinion of the reception it might meet with in India. Some Gentlemen, who ought to have been better informed, than it appears they were, took upon them to aſſure the Houſe, that they had no doubt of its being perfectly well received there; they aſſured us it would be received with open arms. I will not deny that, on my own principles,

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perhaps I might have been ſtrictly bound to have moved for an alteration of this law in the courſe of laſt ſeſſion. But I had reaſons for not doing ſo, which I hope will be thought valid. The attention of the Houſe was wholly engaged in the commercial arrangement with Ireland. The moſt exceptionable parts of the India Bill were not to begin to operate till a year or two afterwards; but principally, I wiſhed to give time for the ſenſe of the Houſe to cool upon its own Act, and for the general judgment of the nation to be collected on the merits of the meaſure.—With reſpect to any impreſſion, which the Bill may have made in India, or any meaſures taken there to obtain a repeal of it, I beg it may underſtood that the buſineſs I am engaged in, and the part I take in it, ſtands wholly independant and unconnected with any thing ſaid or done in India; that if the law, inſtead of being received as it has been, had been accepted by the parties immediately concerned in it, as a benefit, I ſhould not indeed have been ſo forward and officious, as to wiſh to protect *them*

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againſt an inquiſition and a trial, which they were willing to ſubmit to; or to reſtore them to rights, which they were willing to relinquiſh; nevertheleſs I ſhould have taken the ſame courſe I now take. I ſhould equally have moved for an alteration of this law, that a precedent might not be eſtabliſhed, either with or without their conſent, dangerous to the conſtitution of this iſland, and to the rights and ſecurity of the community at large.

To the ſecond objection I anſwer, that although I act independently of the Petitioners, I am as much in earneſt, as they can be, to promote the object of their petition. What I am going to do cannot injure, and may aſſiſt them. In the matter, I take for granted we are agreed. In the manner, I feel myſelf bound by conſiderations of duty here, which they are not equally concerned in. Next to the object itſelf, it is my wiſh, and ſhall be my endeavour to accompliſh it in a way moſt honorable to Parliament, and moſt conſiſtent with its dignity; I mean by an appeal to the

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juſtice of Parliament, and to nothing but its juſtice. The object of the Petitioners may be obtained, and the dignity of Parliament may be preſerved together. For this latter purpoſe it is material, nay it is eſſential, that Parliament, in the reviſion of its own Act, ſhould proceed on its own motion without the influence of any external impulſe whatſoever. On this ſubject I need not enlarge. The reflections, that belong to it, are obvious.

There is one plea however, which I muſt beg leave to enter in this place againſt all inſinuations that have been or may be hazarded, againſt my integrity in the part I take in theſe tranſactions; namely, that nothing ſaid or done now in England, concerning this law, can affect the minds or influence the conduct of our fellow-ſubjects in India. The law made its impreſſion a twelvemonth ago. Whatever the conſequences of that impreſſion may be, they do not depend on any thing which can be ſtated now, or foretold concerning them, and which cannot reach India

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till many months hence. It is a common artifice for the real author of a misfortune to endeavour to ſhift the reſponſibility of his own meaſures from himſelf to the perſons, by whom thoſe very meaſures were moſt ſtrenuouſly reſiſted. By this ſort of ſtratagem, the foreſight of an evil is converted into the cauſe of it, and the prophet is made anſwerable for the miſchief he foretold. Former predictions on the preſent ſubject have already been fulfilled by events, which are themſelves prophetic.

Having thus far cleared the ground and opened the way to my object, the firſt thing I ſhall attempt, ſhall be to ſubmit to the Houſe a ſhort diſtinct view of the law as it ſtands, comprehending the fundamental governing principles, that conſtitute its eſſence, and the prominent features that form, if I may uſe ſuch an expreſſion, the countenance, the *vultus*, or general volition of the law. An explanation of this kind is the more neceſſary, becauſe I know in ſome inſtances, and have reaſon to ſuſpect it may be true in many, that this

law has not been attentively read nor hitherto very carefully conſidered; and I confeſs that I am not ſorry to think ſo. If I thought the reverſe were true, my hopes of ſucceſs to night would be conſiderably abated. As it is, I derive ſome encouragement from your neglect. Beſides this, Sir, by beginning with a view of the principles, a minute examination into the detail of the Bill will, in a great degree, become unneceſſary to my purpoſe. If theſe leading principles are ſuch as the Houſe, on a fair review of them, ſhall think it right to adhere to and confirm, it would anſwer no purpoſe of mine to ſhew that there were miſtakes or inconſiſtencies in the detail.—Defects of that kind belong to all human inſtitutions, and are eaſily corrected. On the other hand, if the principles of the law ſhould on a fair review of them be reprobated by the Houſe, as falſe, abſurd and unconſtitutional, the great and eſſential part of my taſk is accompliſhed. I ſhall have ſtruck a deciſive blow at the root of the tree. The body of it muſt fall and bring the branches to the ground.

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This law, Sir, obviouſly divides itſelf into three great departments, and is therefore to be conſidered generally under three points of view: Firſt, The arrangement made for the diſtribution and eſtabliſhment of power at home: Secondly, The arrangement made for the government of the Company's affairs abroad: and finally, The inſtitution of a ſpecial inquiſition and of a new Judicature in England, for the diſcovery and trial of offences committed in India.—The firſt, I affirm, ſtands in direct contradiction to every rational principle of good government; the ſecond, ſtands in the ſame contradiction, not only to principles but to experience; and the third introduces a capital and dangerous innovation into the criminal juriſprudence of this country, for no purpoſe of juſtice whatſoever, that might not have been equally, if not better, obtained by the Judicatures that exiſt already. I ſtate my propoſitions in terms of great reſerve and moderation compared with my opinion, and hope that I ſhall be able to prove much more than I affirm.

In the firſt place, Sir, I ſtate it as a matter of fact that, with reſpect to the governing power of the India Company in England, the conſtant and notorious complaint was, that the power of the Court of Directors was defective and inſufficient to inforce obedience among their Servants abroad, or to puniſh their diſobedience.—To remove this cauſe of complaint and to ſupply this defect, recourſe has been had at various times to the authority of the Legiſlature; and the profeſſed object of every Bill, that has been offered to Parliament, for the better regulation of the Company's Affairs, has been to ſtrengthen the executive power of the Company:—That is, of the Court of Directors, either by giving them additional powers, or by removing the impediments thrown in their way by the interpoſition of the Court of Proprietors, who did, in reality, diveſt the Directors of all their power. Now, Sir, I admit that the general object of creating a power at home, ſufficient to inforce and ſecure obedience abroad, was proper, wiſe, and neceſſary. Let

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us ſee what courſe the preſent law has taken to arrive at this juſt and neceſſary object.—It leaves the oſtenſible power of the Company with the Court of Directors. By *them* all orders and inſtructions for the governments in India are to be prepared, and by *them* they are to be ſigned; by *them* alſo all appointments to the ſervice are apparently to be made:—Thus far the fact, or the appearance of the fact, is conſiſtent with the principle.—I cannot admit a ſuppoſition that the Legiſlature entertained the leaſt diſtruſt of the integrity, or even of the wiſdom of the Court of Directors. I cannot ſuppoſe it poſſible that the Legiſlature, profeſſing to interpoſe its power for the improvement of inſtitutions, or the correction of abuſes, ſhould have continued the moſt delicate of all truſts, and the moſt important of all powers, namely, that of the Executive Government, in the very hand, that was believed to have betrayed or abuſed it; or in any hand whatever that was deemed to be unequal to the performance of the duty.—The law declares its confidence in the Directors,

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ſince it continues, profeſſedly at leaſt, to veſt in the direction an equal power to that they had before. The law clearly ſuppoſes them to have hitherto made a proper uſe of ſuch power as far as they were able to exert it, and therefore profeſſes to confirm and enlarge it. But the moment you turn over the leaf, you will find that all theſe ideas, and proviſions are reverſed:—That the law aſſumes a new principle utterly incompatible with that, on which any new power could properly be given to the Directors, or any of their former power could properly be left in their hands.—It abandons all idea of ſtrength and vigour in the executive power. Inſtead of uniting that power in ſome one board, which could alone make it efficient, the law divides it between two boards, whoſe operations, from the particular nature of that diviſion, cannot act vigorouſly, even when they act together; and, when they counteract each other, muſt not only be feeble but ridiculous.—Power, in whatever manner it may be divided between different political perſons, is generally impaired by a diviſion; but the ſpecial diviſion

diviſion of it made by this Bill is more extraordinary than even the idea of dividing it at all. It places all the nominal power of the Company in one ſet of men, and all the real power in another. The power, that appears to command, is itſelf commanded, and obedience is expected to the authority of men, whom the law itſelf declares to have no authority at all. If the Company's ſervants were diſobedient in former times, when they knew that the orders they received were really the act of the perſons who ſigned them, what are we to expect at preſent, when they know, becauſe the law itſelf tells them ſo, that the Directors are nothing but formal inſtruments in the hands of another board, and that they are obliged to put their ſignatures, not only to letters and inſtructions which they have not drawn up, but to letters and inſtructions drawn up in notorious contradiction to their declared ſentiments? A more effectual contrivance to excite and irritate a ſpirit of diſobedience, could hardly have been thought of. What language will the ſervants hold now to their

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employers, but this in effect.—" We were " ready to have obeyed you, but we know " that the orders we have received are not " yours. We know that they are directly " oppoſite to your ſentiments." A more plauſible pretence for diſobedience, cannot eaſily be imagined. Sir, I am not reaſoning upon imaginary caſes. The law has eſtabliſhed two juriſdictions over the ſame object. We know that they have already claſhed in one very important inſtance, and I have reaſon to believe that they continue to do ſo in many others. The very moment the Directors began to act, the Board of Controul began to counteract; and the Directors in the end were forced to ſign orders, againſt which they had previouſly proteſted.

The bad conſequences of ſuch a ſyſtem are obvious in theory, and viſible in fact. What good effects it has produced, and how it can poſſibly produce any, muſt be explained by thoſe who approve of it.—The burthen of that explanation makes no part of my undertaking. They, who are of opinion that a double Government, in which every apparent act

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of power of one hand is the real act of power of the other; in which the power that controuls is itſelf controuled; in which the power that commands is itſelf commanded; in which the power, that acts, is known to act againſt its own ſentiments; that ſuch a Government can be wiſe in theory, or efficient in practice, will ſupport the preſent law as it ſtands, for I have ſtated nothing, which the law itſelf does not moſt explicitly enact. They, on the contrary, who may think that a ſingle oſtenſible Government is better than a double one; That it provides better for the uſes of power, and better fixes and ſecures a determinate reſponſibility to anſwer for the abuſe of it, will join with me in affirming, that the executive power of the Company ought to be veſted in one Board, or in one ſet of men; and whether they prefer a Court of Directors, or any other form of Government, they muſt equally concur in my concluſion, that this part of the preſent law defeats its purpoſe, if that purpoſe was to create a government, vigorous on one ſide

and reſponſible on the other; and that, as long as the preſent law is in force, the Company's affairs are under a government, directly the reverſe of what all governments ought to be, and the particular ſituation of their affairs moſt urgently demands.

I have ſtated that the defect, or grievance at home, was want of power over the ſervice abroad. If that propoſition be true, it includes the ſuppoſition that the ſervants abroad abuſed the power, with which they were intruſted, and were diſobedient and refractory to that, which the law had placed over them.—There would have been no occaſion to increaſe, or ſtrengthen the power at home, if it had not met with a reſiſtance, which it could not overcome. But I need not have recourſe to any implication, however clear, and obvious.—Every Bill, that has been brought into Parliament on this ſubject, takes the affirmative for granted, conſiders diſobedience as a fact as well as a crime, and denounces various penalties againſt it.—The preſent law declares, that the wilful diſobeying, or the wilfully omitting to execute,

execute, the orders of the Directors, ſhall be deemed, or be taken as a miſdemeanor at law, and puniſhable as ſuch.—Now, Sir, I would aſk the Right Honourable Gentleman, if ſuch diſobedience has exiſted, who are the perſons moſt likely to have been guilty of it? in what perſons was ſuch diſobedience moſt important in the inſtance, and moſt dangerous in the example? Undoubtedly he will anſwer me, the Perſons in the higheſt truſt and authority in India; they alone could diſobey, they alone could execute and inforce the orders of the Directors; they alone are anſwerable, not only for their own offences, but for every offence, which they promoted by their participation, which they permitted by their negligence, or encouraged by their example. The concluſion from this reaſoning unavoidably fixes the charge of diſobedience upon the higheſt power, and the charge of breach of duty upon the higheſt truſt eſtabliſhed in India. It neceſſarily fixes both upon the Governor General and Council of Bengal.—No man, who knows any thing of India, will affirm

that, if that Council had been determined to do their duty themſelves, they could not have compelled all the ſubordinate ranks of the ſervice to follow their example. Sir, this very law fixes its eye upon the Governor-General and Council, and does, in effect, charge upon them, or the majority of them, all the capital offences, which it reprobates and prohibits.—What is the power in India that can *purſue ſchemes of conqueſt and extenſion of dominion*, but the Governor General and Council of Bengal? What power can *declare war, or commence hoſtilities, or enter into any treaty for making war*, but the Governor General and Council? The ſubordinate Preſidencies could have adopted no hoſtile meaſure of any kind, which the ſuperior Council might not have inſtantly countermanded, if it was propoſed; and arreſted, if it was begun.—There was no poſſibility that Madras or Bombay could carry on war, without the concurrence and aſſiſtance of Bengal. Beſides that they have no reſources of their own, any member of each of thoſe Preſidencies might have been removed

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by the Governor General and Council, if he attempted it. In all the late wars therefore the Governor General and Council muſt be conſidered as principals; but it is well known that, in all thoſe queſtions, the Council was not unanimous.—The meaſures, which this Act ſo expreſſly condemns, were the Acts of a majority. But even that majority was fictitious, ſince it conſiſted of the Governor General, and one member of the Council againſt the remaining two. In truth, the Governor General's caſting voice decided every thing; for although the Council ought to have been compoſed of five perſons, the unfortunate death of General Clavering, threw the whole power of government into the hands of two perſons, of whom one by an unreſerved concurrence of opinion united his vote and authority in that of the other. Such was the gradual devolution of power in Bengal, until it ended in a point, until it veſted in the Governor General alone, until it centered in effect in the perſon of Mr. Haſtings. His colleague is to anſwer for the ſurrender of the power; but Mr. Haſtings

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is eſpecially anſwerable for the uſe that has been made of it. The fact is, that, under the government of a ſingle perſon, armed with a really undivided power, which the conſtitution of the Council never meant to give him, all thoſe principles, which the preſent law condemns and prohibits, were brought into action, and produced all thoſe effects, which the preſent law profeſſes to look back to with indignation, which it threatens hereafter to puniſh, or promiſes immediately to correct. From theſe premiſes it might naturally be expected, that the law, when it condemned certain acts, and reprobated certain principles, would have limited and reſtrained the power of thoſe perſons, who had done ſuch acts, and avowed ſuch principles. For what reaſon the law ſhould act on a concluſion oppoſite to its own premiſes, as in fact it has done, has never been accounted for. —— From the acknowledged abuſe of power, the inference of this law is, that ſuch power ought to be ſtrengthened and encreaſed. It ſtates the experience of former abuſes, and refuſes to

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be guided by it.—In the firſt place it reduces the Council from five perſons to four; that is, it profeſſes to ſtrengthen by contracting it into fewer hands; and then, in order to unite the power of the whole Council in the hand of one perſon, it intruſts the Governor General with the perpetual exerciſe of a caſting voice as long as the Council conſiſts of an even number, and is equally divided; that is, it unites the power and divides the reſponſibility. One would think that they, who had ſeen to what purpoſes the power of the caſting voice had been applied, when it accidentally fell into the hands of a Governor General, would never have propoſed to annex it in perpetuity to that office. But, taking the Bill on it's own principles, and admitting that it might be right to give a conſtant predominant power to the Governor General, I affirm that this is the very worſt way of giving it.--That it does not give it with certainty, and that the framers of the law were afraid or aſhamed to look their own principle in the face.---If a Governor General ought to have ſuch

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power, it ought to have been avowedly ſtated, and directly given.---Otherwiſe it may happen, that the power, which you ſay is neceſſary, may, in fact, never veſt in the Governor General. At all events his tenure of it is precarious. Of courſe the meaſures of the government muſt fluctuate with every accident, that gives or takes away the operation of the caſting voice.---By theſe obſervations, I am far from meaning to admit, that the object is in any degree wiſer than the mode. In my mind, the means are abſurd, and the end is dangerous. I ſpeak from long obſervation and experience, and with all the deliberation and conviction of which my underſtanding is capable, when I affirm, that to unite all the powers of government in India in one perſon, would be a dangerous meaſure in one view of it, and a uſeleſs meaſure in every other.---That it may be the cauſe of irretrievable miſchief, and can anſwer no good purpoſe, which may not be more effectually accompliſhed by another courſe. I well know, Sir, that, at ſight of any great diſtreſs, or miſmanagement,

ment, or abuſe in public affairs, the firſt idea, that is apt to preſent itſelf to the mind, is that of creating a dictator. When I ſay that this is the *firſt* idea that preſents itſelf, I mean that it is not the reſult of experience and reflection. I will not argue upon the wiſdom of ſuch an inſtitution in a political ſyſtem very different from ours.--An arbitrary monarch, or a republic may perhaps delegate all their power for a limited time to one perſon, with ſafety and effect. The dictator had power of life and death; and I will not undertake to deny, though I am far from meaning to admit, that a remedy of ſuch violence, if it did not kill, might poſſibly cure. But remedies of this dangerous vigour are incompatible with our conſtitution.---You cannot give the power; and, if you could, it would anſwer no good purpoſe.---My propoſition is, that, for every good purpoſe, attainable under our conſtitution, a Governor and Council is a much ſtronger power than any that can be exerciſed by a ſingle perſon.

As to any man, who may have demanded ſuch power for perſonal purpoſes of his own, I treat him, as I ſuppoſe this Houſe would inſtantly do—I lay him intirely out of the queſtion. But let me ſuppoſe the caſe of a man of unqueſtionable honor and integrity, who ſhould inſiſt on being veſted with excluſive powers, with an undoubted intention of making the beſt uſe of them. To him I would ſay, "Sir, the confidence, "which you ſeem to repoſe in your own "judgment, does not intitle you to mine.— "I know from experience, that caſes occur "in the government of India, in which the "advice and controul of a Council, are not "only uſeful but neceſſary, and in which "the moſt prudent Governor will be the "readieſt to take advice. A wiſe Governor "will not only take advice, but he will be "glad to have the conſtant check and in- "ſpection of a Council over his actions. "No man, whoſe intentions are upright, "will feel himſelf fettered, or diſtreſſed by "ſuch advice and inſpection."

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But, it will be ſaid, that the plans and views of a Governor General, however proper and judicious, may be thwarted and defeated by factious oppoſition, and by diviſions in the Council.—To this I ſay, that, *primâ facie*, a Governor is juſt as likely to be a factious man and to have bad intentions, as any given member of the Council. Nay, the preſumption is againſt him in proportion to the ſuperiority of his rank and influence. The elevation of power is apt to make men giddy; and the exerciſe of it, I fear, has no direct tendency to improve their morality. In all the diviſions under Mr. Haſtings's government, the Court of Directors fixed the blame upon *him*. The two Committees of the Houſe of Commons, who have inquired into our conduct, have done the ſame.—— Let it be admitted, nevertheleſs, that a majority of the Council is moſt likely to be in fault, and that they thwart the Governor General on factious principles, and for intereſted purpoſes of their own.—If that ſhould really happen, take care that you fix

the blame, where you ought to fix it. If you do not, you are unjuſt in the firſt inſtance, and that injuſtice will miſlead you in the ſubſequent choice of your meaſures. Before you apply a remedy againſt faction, take care that you diſtinguiſh between the merit of the inſtitution itſelf, and that of the perſons who are appointed to fill it up. The wiſeſt inſtitution, that human wiſdom has been able to contrive, may be defeated by an improper choice of perſons.—On the contrary, a poor and feeble ſyſtem, honeſtly, wiſely, and vigorouſly executed, may be attended with all the effects of a virtuous government, and many of the advantages of a ſtrong one.——If, when you have inſtituted a Council on the wiſeſt principles, you fill it up with men of no ability, or experience; with men of a queſtionable character; with men, whoſe general principles are not previouſly known to one another; or, in ſhort, with men, whoſe rank and reputation in life give you no pledge or ſecurity for their good behaviour; and if then you find your Council diſtracted

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by factions; if then you find the wiſe meaſures of your Governor General reſiſted and defeated, do not condemn the inſtitution, but blame yourſelf for the weak or ſhameful choice you have made of the perſons, to whoſe hands you have committed the execution. On this point I deſire to be underſtood to ſpeak generally, and not to allude to any fact or individual whatever. Now, Sir, let me ſuppoſe, that, under the ſame inſtitution, the choice of perſons were to be directly the reverſe of that which I have deſcribed :—That none but men of proper rank, acknowledged ability and unqueſtionable integrity; and whoſe general principles were known to, and approved of by each other, were appointed to this Council.---Will any man ſay that a Council, ſo compoſed, is likely to thwart and embarraſs a good Governor by a factious oppoſition to his meaſures? No, Sir, they will not weaken his authority by oppoſition, but they will make him powerful indeed by their ſupport. A Governor General underſtands nothing of his ſituation, if he thinks that any power,

power, directly veſted in his hands, will carry half the ſway with it, that will always accompany the united Acts of a Governor and Council.—If he truſts to his own excluſive judgement, I tell him, he will find himſelf ſurrounded by ſome of the moſt artful men that exiſt; on one ſide, by natives, who, without our general knowledge, are infinitely ſagacious, who obſerve us attentively, and underſtand us perfectly; and on the other, by ſome Europeans, who, in every thing but their habit and complexion, are perfect Aſiatics. No ſingle unaſſiſted Engliſh judgement is a match for ſuch men, and for ſuch peculiar faculties, as will collect about him from the moment of his arrival.—If again he relies on his excluſive power, I tell him that, for want of clear and accurate knowledge, he will rarely venture to exert it. Every man, who approaches him, will tell him a different ſtory, or give him a different opinion. He will often doubt, and when he doubts, he will not act at all. No vigorous determination can exiſt in a good mind, that is

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not produced by knowledge or conviction. But even his power, when he exerts it, will be feeble and ineffectual againſt the univerſal combination and clamour of all ranks and of all intereſts, which will be formed to counteract him in every meaſure, that tends to reduce exorbitant emoluments, or to correct any abuſe, from which individuals derive an advantage. In this reſpect however, our fellow ſubjects in Bengal have full as much morality as we have. In parallel circumſtances, the ſame thing would happen in England. But, in a great community, the reformer has the voice and approbation of a majority to encourage him. In a very narrow circle he will have no part of the ſociety, in which he lives, to ſupport him againſt the reſt. They will all make common cauſe againſt him, and ſooner or later overcome his reſolution, or break his heart. Upon the whole, I am of opinion, that in a plan of general reform, a united Governor and Council may do much;—a ſingle perſon can do nothing. For the truth of this propoſition, I would readily appeal to Mr. Haſtings,

tings himſelf; and I would ſtate the argument to him with an admiſſion of all the perſonal preferences and objections, which that gentleman could wiſh to eſtabliſh. Let it be imagined then, that the legiſlature, inſtead of forcing him to act with men of unequal rank in life, of oppoſite views, of a ſuſpected or doubtful character, and of an impracticable temper, ſuch as General Clavering, Colonel Monſon, and myſelf, had united him with men of his own caſt and diſpoſition, with men whoſe general views and principles determined them to give him the ſame cordial and vigorous ſupport, which he conſtantly and uniformly received from Mr. Barwell;—then would he ſay, that a Council, ſo conſtituted, and ſo acting firmly together, would not have poſſeſſed in itſelf, and given the governor a ſtronger power, than any that could have been veſted ſingly in his perſon, or any that he alone could have ventured to exert. I am much miſtaken indeed, if, on a caſe ſo ſtated, Mr. Haſtings's opinion would differ from mine. — This at leaſt I may affirm with

with certainty, for my late honourable colleagues as well as for myſelf; that if the perſonal character, political views, and public principles of Mr. Haſtings and Mr. Barwell, had been ſuch as, concurring with our own, had engaged us to unite cordially with Mr. Haſtings, and to give him a ſteady and vigorous ſupport, we ſhould have thought his government not only more wiſely calculated for all the purpoſes of Council and Deliberation, but even ſtronger in the execution, than any power that could have been veſted in him alone; and that it would have carried an opinion, a dignity, an authority, and a ſway along with it, which no faction could have reſiſted, no combination could have withſtood.

From all theſe premiſes, I come to my concluſion on the ſecond general diviſion of the Bill, that the reduction of the Council from five to four was an unwiſe meaſure: That every idea of veſting great excluſive power in any ſingle perſon is at once uſeleſs and dangerous: That, for all good purpoſes, a united Council is infinitely more powerful

than a ſingle perſon can be; and that even if the principle, on which the preſent law proceeds, were ever ſo juſt and neceſſary, I mean that of giving ſpecial powers to a Governor General, this law does not act up to its own principle, or provide for its own object. The power it gives is meanly and indirectly given, and it provides no ſecurity for its continuance, for a ſingle day, in the Governor General's hands. On the whole therefore, if you diſapprove of the principle of giving excluſive power to a ſingle perſon, you muſt condemn this law for having given too much; but, if you approve of the principle, you muſt then condemn the law ſtill more ſtrongly for having given too little.

We are now to conſider the third great diviſion of the Bill; and on this ſubject, I confeſs I expect not only a general attention, but a general concurrence and ſupport. However indifferent and unintereſting the good or bad government of the Eaſt-India Company's affairs, or the welfare of the people ſubject to their power in India, may have been to the nation at large, or to a majority of this

Houſe,

Houſe, or to any individual member of it, there is not a man in the kingdom, to whom the ſubject, that now calls upon you for your attention, ought to be indifferent. At firſt ſight, it may perhaps appear to affect only a part of our fellow-ſubjects, who are at a diſtance from us. If that were true, I ſtill ſhould think it my duty to appeal to you in their behalf. This law declares that they are not ſo diſtant, as to be out of the reach of its power. To whatever extent we carry that power, let us take care to ſhew, that our juſtice goes along with it. Let no man in India have reaſon to ſay, that he is included in the power, and excluded from the juſtice of the legiſlature. But, Sir, it is not for *them* alone, that I have undertaken this heavy taſk. The inſtant ſuffering is theirs. The conſequence and the danger is yours. *Res agitur veſtra.* A capital innovation is made in the criminal juriſprudence of England. New principles are introduced, not only into the ſyſtem of our laws, but into the manners of the people. A new tribunal is erected for the trial of miſde-

meanors committed in India, and armed or accompanied with powers unheard of in this country. The ancient eſtabliſhed mode of trial by a jury, and by the country, is renounced as imperfect and inadequate; a new and arbitrary ſyſtem of enquiry and trial is eſtabliſhed in the room of it; and all this is done for reaſons and pretences equally applicable to any other ſort of crime, and any other ſpecies of offender. This ſyſtem, conſidered as a fact, I deem to be unjuſt and arbitrary.—Conſidering it as a precedent, it holds out a general menace to the whole kingdom; it acts directly upon a few, but it threatens us all.—If by the immediate acquieſcence of the parties, if by their voluntary ſurrender of their rights, the inſtant injuſtice of the fact could be palliated or removed, the danger of the precedent would be increaſed; for who would regard a diſtant menace, if he, who was actually wounded, were to ſuppreſs his reſentment, or to admit by his ſilence, that he had no reaſon to complain.

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In agitating this part of my ſubject, the principle I ſet out with, and the main ground I take, is not only ſupported by the obvious dictates of policy and reaſon, but by the higheſt authority, by which Parliament can be inſtructed. The authority I ſpeak of is at all times intitled to ſubmiſſion and reſpect; but, to the reſpect and ſubmiſſion of this Houſe of Commons in particular, and of the preſent adminiſtration, its claim is ſpecial, and not to be reſiſted. At the firſt meeting of the preſent Parliament, we received an admonition from the Throne, which I am ſorry to ſay was very little regarded in our ſubſequent proceedings. The words his Majeſty made uſe of ought for ever to be remembered.

" The affairs of the Eaſt-India Company " form an object of deliberation deeply con- " nected with the general intereſts of the " country. While you feel a juſt anxiety " to provide for the good government of " our poſſeſſions in that part of the world, " you will, I truſt, never loſe ſight of the " effect which any meaſure, to be adopted

" for

" for that purpoſe, may have on our own " conſtitution, and our deareſt intereſts at " home."

To inſure the ſucceſs of the preſent motion, I deſire no better pledge or ſecurity, than that the Houſe ſhould keep this wiſe admonition in their view, and be governed by it. The principle contained in it has already been ſucceſsfully exerted, though in my judgment very erroneouſly directed, againſt a law propoſed by a right honourable Gentleman * near me; againſt a law, which in no ſhape invaded the conſtitution, or affected any domeſtic intereſt that ought to be dear to us.—The part which the nation, in general, took in that tranſaction, has only proved the facility, in ſome caſes, of ſubſtituting words for meaning, and of totally overturning the ſenſe by the ſound.—The charter of a monopoly was confounded, with the great charter of our freedom, and that ſingle word *Charter* decided the queſtion. When the principle I have alluded to had

* Mr. Fox.

done

done all the duty demanded from it, it was ſtill indeed adhered to in terms, and delivered with great and awful ſolemnity, as an inſtruction to this Houſe; but it was at that very moment completely abandoned in fact, and another directly oppoſite to it aſſumed, and acted upon. In little more than a month after the King had cautioned us from the throne, *never to loſe ſight of the effect which any meaſure, to be adopted for the good government of India, might have on our own conſtitution, and our deareſt intereſts at home*, a Bill was brought into Parliament, which, I affirm, and I have no doubt of being able to prove, attacks the conſtitution of England in its foundation, and not only threatens but invades the ſecurity of every intereſt, that ought to be deareſt to us at home; which not only ſhakes the defences of our domeſtic eſtabliſhment, but acts upon principles, which ought not to be admitted under any government or conſtitution, or in any human ſociety whatever. I deſire it to be underſtood, Sir, that in every thing I am going to ſay, I keep the King's Speech in view as a beacon, or landmark,

mark, by which my courſe ſhall be directed. In the firſt place, allow me to ſtate, in a ſhort general view, what it is that this part of the law enacts. It begins with compelling a ſet of men, whom the law itſelf in ſome ſort prejudges to be criminal, whom it ſtrongly ſuſpects at leaſt if it does not accuſe, of having acquired fortune by corrupt practiſes if not by violence and extortion, to deliver an exact inventory of their property on oath, as ſoon as they arrive in England. Now, Sir, with reſpect to men perfectly innocent and unſuſpected, the beſt that can be ſaid of the law is, that it is harmleſs. If that were all, it would then be equally uſeleſs. From thoſe, who are innocent, you can extort no confeſſion. But I deny that it is in no caſe a hardſhip and injuſtice to an honeſt man, to oblige him to declare publicly the exact amount of his fortune. Numberleſs caſes might be ſtated, in which it might be, to a very honeſt man, a very arbitrary act of oppreſſion. It might even happen, that the act might be oppreſſive in proportion to the innocence of the party; for, though

though his poverty might prove his innocence, it may eaſily happen that many a man would wiſh to have his innocence proved by any other kind of evidence.—We do not live in times, in which poverty is reſpectable. I fear the contrary is true, and that the law, which compels an honeſt man to diſcover the narrowneſs of his circumſtances, whatever it may intend, will in effect only ſerve or aſſiſt to fling diſgrace upon ill fortune, and to make the moſt honourable poverty ridiculous. Men of this deſcription ought certainly to be ſpared.

Now, Sir, admitting it to be an equitable ſuppoſition, that guilt and fortune go together; admitting it to be a ſound principle of juſtice, that men ſhould be tried rather by their wealth than by their actions, let us ſee how the law operates on thoſe, whom it may have reaſon to ſuſpect; on men, who may really have acquired an immoderate fortune by very unwarrantable, perhaps very criminal means. See whether the option, which the law holds out out to ſuch perſons, be likely to produce

any good effect whatever. It obliges the parties to chooſe between a condemnation of themſelves by a diſcovery of their guilt, and a concealment of their guilt by perjury. If this be the option, what is like to be the choice?—That a man, accuſtomed to criminal practices of one kind, will be extremely ſcrupulous about committing another crime to protect the firſt; or that, being already guilty, he will make himſelf ſtill more guilty in order to eſcape puniſhment. In my mind, Sir, all the effect of the law will be, to invite him to add one crime to another; and, if he be already guilty of extortion, of oppreſſion, or cruelty, to endeavour to cover it by perjury. In general, it is neither prudent nor equitable to place any man between a great danger, or a great temptation on one ſide, and a moral or religious obligation on the other. The law ſhould be tender of creating ſuch dilemmas. To impoſe ſuch a teſt on men, whoſe integrity you already ſuſpect, is worſe than imprudent. It is an invitation to falſehood; becauſe it annexes the expectation of impunity for one offence to the commiſſion of another.

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The law then, Sir, in the caſe of any complaint made to the Court of Exchequer, of wilful concealment of property, or defect, or evaſion in the diſcovery, proceeds to ſubject the party to anſwer interrogatories on oath, at the diſcretion of the court. In both inſtances, it revives a mode of inquiſition and conviction, which the conſtitution of this country holds in abhorrence, and which our anceſtors vainly imagined they had extirpated for ever, when they aboliſhed the Star-chamber. With reſpect to the interrogatories, it might be ſufficient to ſay, that they are liable to the ſame fundamental objection, with the method propoſed for extorting a diſcovery in the firſt inſtance; namely, that they place a perſon, who by the ſuppoſition is criminal, between the neceſſity of condemning himſelf by his veracity, or acquitting himſelf by his falſehood. But theſe interrogatories carry the ſame abſurd and wicked principle a great deal farther. They ſuppoſe the party to have been guilty of perjury in the firſt inſtance, and they call upon him either to convict himſelf

of that crime, or to cover it by a ſeries of new perjuries in his anſwers to the interrogatories. I have ſtated the principles of the new inquiſition, as I find them avowed and eſtabliſhed, and ſhall leave them without argument to the ſenſations and to the judgment of the Houſe. To make it felt that they are arbitrary and abſurd requires no argument. The moment they are ſtated, they are condemned.

The law, having now exerted the utmoſt of its power to extort a diſcovery of guilt, by the confeſſion of the guilty, proceeds to ſupply the defects of that mode by another courſe, which indeed ſeems to promiſe a greater probability of ſucceſs, but in my judgment is ſtill more deteſtable than the other, becauſe it holds out rewards to treachery and to baſeneſs, and tends to corrupt and deſtroy all the little morality we have left in private life. This law formally introduces into the inmoſt receſſes of perſonal confidence and friendſhip, the worſt of all the inſtruments that ever have been employed by power without right. It acknowledges

ledges the office of ſpy and informer to be uſeful in the general intercourſe of ſociety, and rewards him with a ſhare in the ſucceſs of his information. Sir, the man, who diſcovers a crime and brings a criminal to puniſhment, performs an honourabl e duty to the public; but he, who ſearches into the circumſtances of another, who inquires in order to accuſe, and who accuſes in order to profit by the amount of his diſcovery, can be nothing but a traitor in private life; he never can be a uſeful ſervant to the public. But the temptation held out by this law is not confined to common ſpies and informers. It goes to perſons much better able to diſcover the amount of a concealed fortune, to perſons whom you have particularly truſted; your agent, your ſecretary, your banker, or your friend. Who knows but that the invitation of the law may ſeduce a ſon to betray his father, a a brother to betray his brother; and, what is worſt of all, perhaps ſome perſon, whom you have eſſentially ſerved, to betray his benefactor. The very money you have lent him, if, whether

whether wilfully or not, you ſhould have omitted it in your account, will enable him to accuſe you of concealment, and intitle him to ſhare in the forfeiture that follows. I appeal to every thing that is honourable and virtuous in this Houſe.—Is there an object of penal juſtice, againſt any particular ſet of men, adequate to the price you muſt pay for it, if you ſuffer principles ſuch as theſe to be introduced not only into the laws of the kingdom, but into the manners of the people?

This appeal to the general ſenſe and judgment of the Houſe, I truſt, will not be ineffectual. But the juſtice of my cauſe intitles me to look every where for aſſiſtance. There is a particular body of men, powerful in this Houſe, and in this kingdom, who, I think, are bound by many ſpecial conſiderations to take part with me in the preſent queſtion. I mean the gentlemen, who have unaccountably been miſled to give their conſent to a law, which bears hard upon their former companions, and upon all the connections they have left in India. I appeal to them

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as to men of honour, and put the queſtion ſtrongly upon their character, whether they will deliberately inflict upon others ſuch reſtraints and penalties, as I imagine they would have thought unjuſt againſt themſelves? Whether they will look back with ſympathy and concern to the ſituations, in which they were lately placed; or whether, having quitted thoſe ſituations, they will content themſelves with holding to all their deſerted friends and companions the baſe excluſive language of perſonal eſcape and ſecurity —— *Occupet extremum ſcabies.*—Sir, I am aware of the turn that may be given to an argument of this nature. It is directed *ad homines*, and with *them* it ought to have weight. But, in order to give point and direction to this appeal, and to make it intelligible by application, I deſire leave to ſuppoſe that all the gentlemen alluded to were for a moment repreſented by one perſon, and that that perſon were my honourable colleague in the government of Bengal, now a Member of this Houſe *.

* Richard Barwell, Eſq.

To

To him at leaſt I have ſome right to addreſs myſelf. I would requeſt him to conſider whether if, before he left India, before he had remitted home and inveſted in England the honourable reward of his labours, (and certainly the labours were conſiderable, if we are to meaſure them by the amount of the reward,) it had been propoſed to him to give or refuſe his concurrence to a law, which ſhould oblige him, the moment he arrived in England, to make a public declaration on oath of the amount and particulars of his fortune; which ſhould compel him to ſubmit to interrogatories on oath concerning the truth of every particular of that declaration, and which ſhould hold out temptation and ſeduction to his agents, to his friends, and to every man in his confidence, (by the promiſe of ſharing in his fortune,) to find out ſome error in his account,--whether, if ſuch a propoſition had been made to him, he would have hought it a juſt and reaſonable law againſt himſelf;—whether he would have aſſented to it with chearfulneſs, or rejected it with indignation. I certainly

certainly meant to call upon him, if he had been preſent, to anſwer explicitly for himſelf. Yet, I think I know my honourable colleague's ideas and principles on this ſubject, ſufficiently to venture to anſwer for him. I will venture to affirm for him, that he would not have intirely approved of theſe inquiries into the ſtate of his fortune, much leſs of the encouragement held out to his particular friends to accuſe him. If I form a juſt judgment of my honourable colleague's principles, he will aſſiſt me in protecting others from an inquiſition, which he would have thought oppreſſive to himſelf. I cannot believe that he would apply any other meaſure to the actions of others, but that which he would willingly abide by for his own.

I come now, Sir, to the conſideration of the tribunal and mode of trial, which this Bill creates and ſubſtitutes in the place of the antient trial, which every man in this land is intitled to, even the felon, the murderer and the parricide, when he throws himſelf upon his country: that is, to be

tried by twelve indifferent perſons, as nearly as poſſible of his own level, and by the law of the land.—Let us ſee what this tribunal is, how it is conſtituted, and how it is to act. In the firſt place, Sir, it profeſſes to conſiſt of thirteen perſons, whom I will ſuppoſe for a moment to be choſen with all the indifference, which the law affects.—If they be really ſo choſen, it will not follow that, with reſpect to ten of them, namely the four Lords and ſix Commoners, any advantage is gained over a jury in point of knowledge, or any other judicial qualification; for I believe it will not be denied, that a ſpecial jury of Engliſh Gentlemen, is juſt as likely to be qualified for this or any other judicial office, as any ten members of the Lords and Commons taken at a venture.—But the poſitive diſadvantages of the new tribunal are many and obvious.—The Lords and the Judges are not Peers of the criminal. An inſtitution, that calls on ſuch perſons for a verdict, renounces every uſe and advantage, which the laws of this country annex to the trial of facts by our Peers.—In favour of what?

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in favour of a tribunal, in which every one of the component parts is placed in a ſituation in which they were never placed before. This tribunal abandons the wiſe and antient ſeparation of the verdict from the judgment, and unites in the ſame perſons the verdict, the explanation of the law, and the ſentence.—Lords and Judges are called upon to find the facts, and the Commoners if they will, may determine the law, and pronounce the judgment. The vote of the Commoners on a point of law is juſt as valid as that of the Judge.

With reſpect to the method of chuſing the pannel, I ſhall avoid ſaying any thing that may appear invidious, or perſonal.--- My cauſe is too powerful to want the aſſiſtance of perſonal reflections. I ſtand on public ground, and ſhall take no other. I ſtate it therefore only as a matter of fact, not only not denied but defended, that in the very firſt inſtance of chuſing the pannel, out of which the new tribunal is to be finally ſelected, the choice was made by treaſury liſts diſtributed among the members of this Houſe, and

that the perſons named in thoſe liſts have been appointed. I ſtate the fact without obſervation, and ſhall leave it ſo to the reflections of the Houſe.

The law proceeds to preſcribe a courſe, by which the whole pannel of three Judges, twenty-ſix Lords, and forty Commoners, ſhall be finally reduced to thirteen perſons, whoſe names are to be inſerted in a ſpecial commiſſion, in order to form the new tribunal. On this part of the proceeding I obſerve, that, admitting the neceſſity of changing the form of adminiſtring criminal juſtice, it does not follow that there is any neceſſity for renouncing the fundamental principles, on which that juſtice has been hitherto adminiſtered in England.—Your profeſt object is to create an impartial tribunal. The formation of a jury is ſo contrived, that it is ſcarcely poſſible it ſhould not be impartial. Then why abandon the forms eſtabliſhed for the choice of a jury?—The preſent law does ſo without reaſon or neceſſity. It allows the party a right of *peremptory* challenge only againſt thirteen of the

the Peers and twenty of the Commoners. Now, ſuppoſing it proper to admit of none but *peremptory* challenges, why ſhould the exerciſe of that right be ſtopped, as long as a number of Lords and Commoners remain ſufficient to form the tribunal. If, on the contrary, it be proper to limit the number of *peremptory* challenges, why ſhould you reſtrain the party from challenging the remainder of the pannel for *cauſe aſſigned?* This, I affirm, is not only an unneceſſary departure from the ancient conſtitution of juries, but a DENIAL of right, compleatly unjuſt and abſurd.---It is unjuſt to force the party to include his challenges for *a cauſe aſſigned* within the number, which you allow him to make *peremptory*. The reſult may be, that you will allow no *peremptory* challenge at all; ſince it may very eaſily happen, that all his *peremptory* challenges may lie againſt perſons, againſt whom he might be ready and deſirous to object for ſpecific reaſon. But can any thing be conceived more abſurd than that the law ſhould yield perhaps

haps to his malignity, perhaps to his caprice, and refuſe to liſten to his reaſon ?

Againſt the three Judges, there is to be no challenge allowed, for reaſons I preſume deduced from the ſanctity of their character and the reſpect due to their ſtation. To the former I ſhall only ſay, that Judges may be better men than we are, but they are men ; and that caſes occur, in which an exception to a Judge, even in the diſcharge of his proper office, would be deemed valid, and would force him to retire. To the latter, I ſay, that a Judge has no right to carry along with him the reſpect, due to his proper ſtation, when he deſcends to any other. I will not challenge him, as long as he maintains the poſt, at which the conſtitution placed him.---But, if he accepts of another office, if he takes upon him to find the facts, if he condeſcends to be a juryman, he muſt accept of that office with all its conditions. He has no claim to the privilege of a Judge, while he does that, which no Judge in this kingdom ever did before.—But is it impoſſible that one of

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the three Judges may be an enemy of the party accuſed? Would you really appoint ſuch a Judge to try ſuch a party? and, if the objection were ſo ſtated, would you affirm that it deſerved no attention?—If, even without ſuppoſing a direct enmity, two men were known to have ſtood on terms unfriendly to each other, would you appoint one of them to judge the other? Let me appeal to the honour of the learned gentleman oppoſite to me, who knows what has paſſed in India. If *I* were the perſon accuſed, would he chooſe Sir Elijah Impey to be my Judge? That gentleman, I preſume, would decline the office. But for myſelf I can affirm, that if *he* ſhould be accuſed, I would never ſit in judgment upon him. I may be proſecutor,—I may be evidence againſt him;---but I will never give a judicial vote in any cauſe, in which Sir Elijah Impey may be party, unleſs I can ſafely give it for him.

The tribunal, at laſt obtained, profeſſedly conſiſts of thirteen perſons. For what reaſon this ſmall number ſhould afterwards be reduced

reduced to ſeven is not explained.—The whole power of the thirteen is finally committed to a *quorum* of ſeven, provided one of this number be a Judge.—In ſo very ſmall a number it might be thought, that an unanimous judgment might ſafely be demanded. In finding the facts at leaſt, it might be expected that their verdict ſhould be unanimous. But, in this tribunal, a new and dangerous principle of deciſion is aſſumed. The ſenſe of the Court is to be bound and determined by a majority of votes; that is, the facts may be found, the law determined, and the puniſhment awarded by four perſons out of ſeven; and the Court may be ſo compoſed and divided, that poſſibly one Lord, and three Judges may find all the facts againſt the finding of three Commoners, or *vice verſâ*, that four Commoners may determine the law againſt the three Judges. What they *will* do, I know not; but this is what they *may* do under the preſent inſtitution.

We are now to conſider the courſe and conduct of the trial. With reſpect to the trial of crimes in general, I preſume it will

will not be denied, that two conditions are eſſential to the due adminiſtration of juſtice, at leaſt that they have been hitherto thought ſo in England. The firſt is peculiar to our conſtitution, that the jury ſhall not ſeparate before they have agreed upon their verdict. The law is cautious of expoſing the virtue of jurymen to the temptations, which might be thrown in their way, if they were ſuffered to go out of Court, and diſperſe before they had found their verdict. The law will not even confide in their judgment ſo far, as to ſuffer them to liſten to any extrajudicial evidence whatever. When once they are ſhut up, all acceſs to them is forbidden. Let the Houſe compare the wiſdom of theſe precautions with the latitude allowed to the preſent tribunal. The Commiſſioners may adjourn from day to day *ad libitum*.—They may mix in ſociety, and liſten to all manner of diſcourſes upon the ſubject matter of the charge depending before them. If the party accuſed be a very guilty man, he muſt be wealthy in the ſame proportion; and if the evidence ſhould appear to go againſt him, what ſecu-

rity have you that he will not attempt to corrupt the integrity of one or other of the Commiſſioners, whom he or his agents may meet out of Court and converſe with every day? Since a majority is to decide, it may happen that, by corrupting one out of ſeven, the judgment may be in his favor. In all theſe obſervations, Sir, I earneſtly deſire it to be underſtood that I ſpeak of inſtitutions, and not of perſons. The Lords and Commoners, who compoſe the preſent Pannel, are honourable men. So are we all. But let it be remembered, that laws are made to guard againſt what men *may* do, not to truſt to what they *will* do.—Admitting corruption to be impracticable, there are other ſorts of influence, againſt which the virtue of men ſhould equally be defended. The language of perſonal enmity, or public odium on one ſide, or of intereſt, ſolicitation, or compaſſion, on the other, may engage the paſſions, or bias the judgment of the Judge. But, if any of theſe Lords and Commoners ſhould be connected with the adminiſtration, and if the party accuſed ſhould be a perſon whom

whom the Miniſter ſhould think it neceſſary to ſeduce or intimidate; whoſe fortune, for example, might intitle him to a ſeat in the Houſe of Commons, then look to the conſequence. Who will venture to affirm that it is impoſſible for a Commiſſioner, ſo connected, to ſound the inclinations of the miniſter; to appriſe him what turn the trial is likely to take, and to receive his inſtructions from time to time for his own ſubſequent conduct. — Of the preſent miniſter I am ready to admit, that ſo baſe a practiſe is not to be ſuſpected. Concerning his perſonal honour, I am ready to take every thing for granted, that his warmeſt friends can ſay of him. My argument is applied generally to things, not to men, and ſtands abſtracted from all perſonal conſiderations whatſoever.

The ſecond great condition, which I deem to be eſſential to the adminiſtration of juſtice, and which is admitted to be ſo not only in this country, but in every other where juſtice is really adminiſtered, is that the trial ſhould be *in open Court*. The law of England does not allow that juſtice can be done in ſecret; there-

fore will not ſuffer the doors of a Court of Juſtice to be ſhut. The wiſdom of our anceſtors has deemed the inſpection of the public eye upon the proceedings of the Court, to be a powerful guard over the virtue of the Judge; and the beſt and wiſeſt of our Judges have thought it no impeachment of their integrity. An open trial obliges the Judge, in every queſtion that comes before him, to chooſe between his duty, and the loſs of his reputation.—On the face of the preſent law, I ſee nothing that provides for and ſecures a public trial. For any thing that appears to the contrary, the Commiſſioners may ſit, in cloſe receſs, in one of the Chambers of the Treaſury. If I am miſtaken on this point, I wiſh to be corrected, for I ſhould be ſorry to load the law with an ill-founded imputation.

Sir, it requires but little ability to ſhew the dangerous nature and effect of theſe invaſions in the plan and ſyſtem of the laws of England. He, who is able to ſtate the fact, demonſtrates the conſequence. But we have been told already, and I expect we ſhall be told again,

again, that neceſſity ſuperſcedes all principles; that there is no alternative; that offences, committed in India, are of ſuch a nature that it is impoſſible to bring them within the cognizance, and of courſe to ſubject them to the verdict of a Jury. It may be ſo.—But I own it is a propoſition that paſſes my underſtanding. When, by virtue of the powers already veſted in the Courts below, the neceſſary evidence from depoſitions taken in writing ſhall be obtained from India, why the whole of it may not be reduced to diſtinct iſſues of fact, on which a Jury may pronounce as well as any other tribunal, is a queſtion, to which I am not able to conceive a ſatisfactory anſwer. We are not ſpeaking of political offences, of crimes againſt the ſtate, which in many caſes perhaps can only be eſtabliſhed by a minute examination of letters, inſtructions and correſpondence, and by a careful deduction and inference from intricate proceedings to certain motives. The declared and only object of the preſent law is *to proſecute and bring to ſpeedy and condign puniſhment, perſons guilty of the crime*

*crime of extortion and other miſdemeanors.*—Theſe offences, if committed, are matters of fact, on which, it remains to be proved that a Jury of Engliſh Commoners cannot find a verdict, but on which a Court, conſiſting of Judges, Lords and Commoners, can very well find a verdict, declare the law, and pronounce a judgement. I diſtruſt my own knowledge too much, and ſee too much legal learning oppoſed to me, to undertake to prove a negative to that propoſition. Yet even that taſk would have been undertaken, and I doubt not with ſucceſs, by a learned Gentleman *, whoſe heart as well as his learning goes with me on this ſubject, if a ſevere illneſs, unfortunately for me and for the public, had not prevented his attendance this day. I lament his abſence, though I know I ſhall not be left without ſome powerful legal ſupport.—Strictly and properly, the burthen of the proof lies on the affirmative. They, who innovate, are bound to ſhew a ſuffici-

* Mr. John Lee.

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ent poſitive reaſon for the innovation. They are bound to the direct proof of this clear diſtinct propoſition; namely, that a jury *is* abſolutely incapable, and cannot by any means be made capable of trying an act of extortion, or other miſdemeanor committed in India. No doctrine, that does not clearly and diſtinctly go to the full extent and meaning of this propoſition, will ſupport the preſent law. The innovation is avowedly founded on a ſuppoſed neceſſity, and no alternative. But if a Jury either is, or can by any means be made capable of the ſervice, you *have* an alternative; the neceſſity does not exiſt, and you have no pretence to innovate. Sir, this will be a ſerious undertaking for men of rank and character in the profeſſion. It is not a trial of ſkill between cunning knowledge and unlearned reaſon—It is not a victory of legal argument over an unlearned individual, contending for his birth-right, which, on ſuch a queſtion, will ſatisfy the ſenſe and judgment of this nation. The learned perſon, who ventures to affirm that the

propoſition

propoſition is true in the terms, in which I have ſtated it, ſhould remember that his character is at ſtake, that he acts under the inſpection of the public eye, and that he is going to chooſe between his duty and the loſs of his reputation for ever. I will tell him too, that I have good reaſon to believe, though I do not directly aſſert, that the firſt law authorities in this kingdom are againſt him. I truſt he will find it ſo, when the queſtion comes to be agitated, as ere long it muſt be, in another place.

Before I conclude this part of my ſubject, I flatter myſelf the Houſe will allow me to remind them of the little triumph that prevailed, when a right honourable friend of of mine * declared very lately, that, after long and ſerious deliberation, he preferred the trial by impeachment to that of proſecution in the courts below, for the purpoſe of bringing a capital Indian delinquent to juſtice; as if my honourable friend had thereby abandoned the trial by jury, and furniſhed the advocates of the preſent tribu-

* Mr. Burke.

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nal with reaſon to conclude, that his opinion on this ſubject coincided with theirs. I hope to be able to convince the Houſe, that the concluſion was precipitate, and the triumph premature. I ſhould indeed have thought myſelf unfortunate, if the ſentiments of my honourable friend had differed from mine on this important queſtion. I ſhould have diſtruſted my own moſt deliberate judgement, and ſhould have acted with heſitation and reluctance even upon the moſt deliberate conviction. The relation, in which I ſtand to my honourable friend gives him every claim over me, that belongs to authority, and juſtifies ſubmiſſion. It is that of a being, that is inſtructed, to the being that inſtructs him.--Sir, I am not here to pronounce my honourable friend's panegyric; nor if I were equal to the taſk, would I now venture to undertake it. It would lead me to reflections, that would utterly diſcompoſe me—to the recollection of virtues unrewarded, and of veteran ſervices growing grey under the neglect, if not ingratitude, of his country. If fame be a reward, he poſſeſſes it already.

But I know he looks forward to a higher recompence. He confides and believes, as I do, that, in ſome other exiſtence the virtues of men will meet with retribution;—where they, who have faithfully and gratuitouſly ſerved mankind, "*ſhall find the generous* "*labour was not loſt.*"

On the point in queſtion, there is no difference between us. His opinion comes in aid of mine. Our minds are united, and our principles act together. If it be a contradiction to ſay that, for the puniſhment of crimes of a ſpecial quality and magnitude, the trial by impeachment is the ſafeſt, the moſt effectual, and the beſt; but that, for offences of a lower order, the eſtabliſhed trial by jury ſhould ſtill be adhered to;—He, who maintains the affirmative, charges that very contradiction upon the laws, the inſtitutions, the practiſe and the wiſdom of England ever ſince Parliaments had a being. I am not afraid of erring with ſuch powerful and venerable authority. The trial by impeachment is founded on a popular right coeval with the Houſe of Commons.

mons.——It is as well known and as well eſtabliſhed in our conſtitution, as the trial by jury, though it cannot occur ſo often. There are caſes of crimes and of criminals, to which no other form of proceeding is adequate, to which no other mode of trial is commenſurate. In ſuch caſes, the trial by impeachment does that, which no other trial can accompliſh. It not only forces the crime to an inquiry, it not only demands juſtice againſt the criminal, and inſures his puniſhment, but it provides for another object, which, in ſome inſtances, is not leſs intereſting and neceſſary, than even juſtice and puniſhment. It clears the honour of the nation, in which ſuch crimes are committed, and to which ſuch criminals belong. It vindicates the character of this country from reproach in the judgment of mankind. Theſe are the occaſions, in which the pre-eminence of the wiſdom and juſtice of England diſplays itſelf over all other nations. Other nations may rival us in our crimes;—but there the competition ends. In England alone, the dignity of the trial riſes to a level

with the eminence of the crime. When the Houſe of Commons impeaches, it is a ſolemn appeal to the judgment of the world. When crimes are charged, by which the happineſs, if not the exiſtence of whole nations has been affected, by which ſtates and princes, and all the higheſt orders of men as well as the loweſt have been reduced, by the baſe and iron hand of upſtart power, power to miſery and ruin, the trial by impeachment makes proclamation to the kingdoms and princes of the world, to attend and look on, while the democracy of England advances in perſon to the charge, aſſumes the noble office of accuſer, and forces the crime to trial before every thing that is great, and noble, and wiſe, and learned, and venerable in our country. The crime, the criminal, the proſecutor, the judges, the audience, and the trial, produce and conſtitute a ſcene, which no other country can exhibit to the world.——Let us hope, that the neceſſity of ſo ſolemn a proceeding will not often exiſt hereafter. The conſtitution has wiſely reſerved it for crimes of ſpecial magni-

magnitude; and rare, in proportion to their greatneſs. The ſame conſtitution has provided, with equal wiſdom, for the puniſhment of offences of an inferior rank, by another courſe equally appropriated to its object. Let my honourable friend proceed therefore to the diſcharge of that elevated duty, to which his eminent abilities call him. There are ſtill other duties to be performed by inferior abilities. While *he* travels on in the high road of impeachment, I ſhall endeavour to attend his courſe, in a narrower track, but in a parallel path. The lines, we act in, neither croſs nor diverge. They are equally directed to the ſame general object of juſtice, and they run together.

Now, Sir, the principal part of my taſk is compleated; for, generally ſpeaking, my preſent purpoſe is not ſo much to inſtitute, as to correct. I mean to take away a great deal, but not to enact much in the place of it. In other circumſtances, I ſhould have thought myſelf bound to attempt a great deal more. If I had been united in views and ſentiments with

with the acting adminiſtration of the country, and might therefore have hoped for their ſupport in the plan, and their hearty concurrence in the execution of a new law on this ſubject, I certainly ſhould have extended my thoughts to a comprehenſive poſitive inſtitution for the better government of India. But, ſince I do not ſtand in that predicament, I muſt adopt another conduct conformable to my ſituation. I muſt take care that whatever I propoſe, *rebus ſic ſtantibus*, whether to correct or to enact, the thing I propoſe may execute itſelf, and not depend for its ſucceſs on the temper of adminiſtration. I muſt take care not to aim at any thing but what may really be attainable under the preſent circumſtances; and finally, that while I am endeavouring to do good, I may be ſure of doing no miſchief.——Acting on theſe limited principles, I ſhall proceed to ſtate to you briefly and generally what I propoſe to do; if the motion ſhould be carried, my purpoſe is to extirpate out of this Bill, the principal evil that belongs to it;—to revert to that, which was good before, or which,

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if not perfect in itſelf, has not been improved by innovation;——to ſtrengthen that good if it be feeble, and not to enact much by poſitive inſtitution. I would rebuild the Houſe I live in from the foundation, if I could; but, ſince that is not in my power, I will endeavour to repair it.

Proteſting, as I continue to do, againſt the form, in which the executive powers of the India Company in England are actually diſtributed, and declaring as I do that, in my opinion, a more abſurd ſyſtem of government could not have been imagined, I ſhall leave it as it ſtands. I perfectly know that an attempt to alter it would have no chance of ſucceeding;—nor would I truſt the execution of a better ſyſtem in the hands of men, who were adverſe to it.

With reſpect to the government of Bengal, the alteration I ſhall propoſe, is no more than to revert to the former conſtitution, which this law has very unwiſely altered. I would replace that government in a Governor-General and four Councillors, with nearly the ſame powers, with which they were

with the acting adminiſtration of the country, and might therefore have hoped for their ſupport in the plan, and their hearty concurrence in the execution of a new law on this ſubject, I certainly ſhould have extended my thoughts to a comprehenſive poſitive inſtitution for the better government of India. But, ſince I do not ſtand in that predicament, I muſt adopt another conduct conformable to my ſituation. I muſt take care that whatever I propoſe, *rebus ſic ſtantibus*, whether to correct or to enact, the thing I propoſe may execute itſelf, and not depend for its ſucceſs on the temper of adminiſtration. I muſt take care not to aim at any thing but what may really be attainable under the preſent circumſtances; and finally, that while I am endeavouring to do good, I may be ſure of doing no miſchief.——Acting on theſe limited principles, I ſhall proceed to ſtate to you briefly and generally what I propoſe to do; if the motion ſhould be carried, my purpoſe is to extirpate out of this Bill, the principal evil that belongs to it;—to revert to that, which was good before, or which,

if

if not perfect in itſelf, has not been improved by innovation;——to ſtrengthen that good if it be feeble, and not to enact much by poſitive inſtitution. I would rebuild the Houſe I live in from the foundation, if I could; but, ſince that is not in my power, I will endeavour to repair it.

Proteſting, as I continue to do, againſt the form, in which the executive powers of the India Company in England are actually diſtributed, and declaring as I do that, in my opinion, a more abſurd ſyſtem of government could not have been imagined, I ſhall leave it as it ſtands. I perfectly know that an attempt to alter it would have no chance of ſucceeding;—nor would I truſt the execution of a better ſyſtem in the hands of men, who were adverſe to it.

With reſpect to the government of Bengal, the alteration I ſhall propoſe, is no more than to revert to the former conſtitution, which this law has very unwiſely altered. I would replace that government in a Governor-General and four Councillors, with nearly the ſame powers, with which they were

were inveſted by the Acts of 1773, and 1781. This alteration is eaſy and will execute itſelf. It has an accidental advantage too, which may recommend it to the favour of thoſe, who poſſeſs the patronage of the Company. It revives a fifth office of Councillor with ten thouſand pounds a year.

With reſpect to all that part of the law, which creates an inquiſition, which compells the ſubjects of Great-Britain to anſwer interrogatories on oath, which endeavours to corrupt the virtues of private life by promiſing to make men rich, if they turn traitors and informers, and which deprives the ſubjects of this kingdom of their great chartered right, of their common-law right, and of their unalienable birth-right, a trial by their peers,—my intention is to tear it out of the ſtatute book. I would eraſe it, if I could, from the memory of mankind.—I would replace the criminal law of England, in the ſtate in which it ſtood.—If the powers already given to the Court of King's-Bench, for the purpoſe of obtaining evidence from India, be inſufficient, I have no objection to enlarging

enlarging them.—If the formality of pleading, or the preſent rules of evidence, or any other formality, ſtands in the way of juſtice, let the law be altered. But when the evidence is once collected and prepared, let it be ſubmitted to a jury.—With reſpect to written evidence, though I allow it muſt be accepted, ſince in ſome caſes it may be impoſſible to obtain any other, yet I think the preſent law abuſes that conceſſion, and carries the admiſſion of written evidence to a moſt dangerous exceſs. It is enacted, "that *all* writ-"ings, which ſhall have been tranſmitted "from the Eaſt-Indies to the Court of Di-"rectors, by their officers and ſervants reſi-"dent in the Eaſt-Indies, in the uſual courſe "of their correſpondence with the ſaid Court, "and which in any manner relate to the "ſubject matter of the charge, may be ad-"mitted to be offered in evidence." The correſpondence, ſo deſcribed, I dare ſay amounts to above a hundred large folio volumes every year. It comprehends not only the proceedings of the ſuperior Councils in India, but thoſe of their ſubordinate

Councils, and all the correſpondence of all of them with every individual, with whom they have any tranſaction or intercourſe whatever. The law declares that every thing contained in this enormous heap of writing, may be admitted to be offered in evidence, and then the Court is to ſift and examine it. The taſk would be a heavy one, even if a clear certain rule could be eſtabliſhed for diſtinguiſhing the credible parts of ſuch evidence from the reſt. The effect of this clauſe will be to make the Company's correſpondence an indirect channel of accuſation between man and man, and to fill it with every thing that intereſt, jealouſy, or malignity can invent, or that ignorance and folly can believe on any ſubject. I will not now attempt to ſtate any preciſe limits, for this dangerous admiſſion of written evidence. In general I ſhall only ſay, that authentic copies of the orders of the Court of Directors may be admitted as evidence, when the charge is for diſobedience; and that every man's writing, or an undoubted copy of it, may be evidence againſt himſelf.—On this point I hope

I hope to be aſſiſted with legal advice, and to be able to ſtate my opinion with greater preciſion, if I am permitted to bring in the Bill; and here I ſhall conclude.— They, who may differ from me in opinion, cannot reaſonably impute the part, I have taken in this buſineſs, to any perſonal apprehenſion or intereſt of my own. As to myſelf, I ſtand as clear of the law, as if I had never been in India; and as to particular friends or connections, I have now but very few in that country. Thoſe few, I fear, have not proſpered. If any of them are rich, they have no occaſion to ſtay there. If any of them are conſcious of having uſed improper means to acquire a fortune, they will naturally ſhelter themſelves under the preſent law, by returning to England before January 1787. I attack this law, becauſe in fact it holds out protection to the guilty, and tends to corrupt the innocent; becauſe it introduces falſe principles into the adminiſtration of juſtice; becauſe it is unjuſt in its immediate application, while it eſtabliſhes a precedent dangerous to this

kingdom; becauſe it takes away the trial by jury, becauſe it invades and alters the conſtitution, and becauſe it ſhakes the ſecurity and threatens the liberty of every ſubject of Great-Britain.

I therefore move, That leave be given to bring in a Bill, to explain and amend an Act made in the twenty-fourth year of the reign of his preſent Majeſty, intitled "An "Act for the better Regulation and Manage-"ment of the Affairs of the Eaſt-India Com-"pany, and of the Britiſh Poſſeſſions in In-"dia; and for Eſtabliſhing a Court of Judi-"cature for the more ſpeedy and effectual "Trial of Perſons, accuſed of Offences com-"mitted in the Eaſt-Indies.

Motion ſeconded by William Wyndham, Eſq.

Previous queſtion moved by Henry Dundas, Eſq. and carried.

On

ON Monday the 13th of March, 1786, Mr. Francis, ſtated to the Houſe, that, as certain meaſures of very great public importance were now in agitation, he thought that ſuch meaſures ought not to be decided until they had endeavoured to collect, in a conſtitutional way, the general ſenſe of the nation concerning them; namely, by calling the repreſentatives of the people together.—That the impeachment of Mr. Haſtings was an object of great public intereſt and concern. That the meaſure, which it was ſaid the Chancellor of the Exchequer had in view, for applying the exiſting ſurpluſſes of revenue to the diſcharge of debt, was a ſubject of equal novelty and importance, and particularly called for the attention of a full Houſe of Commons.—But above all he thought that, as Mr. Dundas had given notice of his intention to reviſe and correct the India Bill of 1784, there ought to be a Call of the Houſe for the ſpecial purpoſe of reconſidering that Bill. That it had not been ſufficiently attended to in the firſt inſtance, having

having been generally debated and carried in very thin houſes.—That if the principles of this law, upon a more deliberate review of it, ſhould be confirmed, they would take root in the conſtitution, and might never be eradicated. The queſtion concerned the public liberty, and ought not to be decided without a full repreſentation of the people. He therefore moved, That the Houſe might be called over on Monday the 27th of March.

Mr. Fox ſeconded the motion. Mr. Pitt propoſed that the call ſhould be put off to the 4th of April. By this amendment the principal purpoſe of the motion was defeated.

On

On Friday the 17th of March, Mr. Dundas having moved for leave to bring in a Bill, in the terms of Mr. Francis's motion of the 7th: and the Houſe having unanimouſly agreed to it, Mr. Francis moved "That it be an inſtruction to the gentlemen appointed to prepare and bring in a bill to explain and amend an act paſſed in the 24th year of his Majeſty's reign, intitled, 'an Act for the better Regulation and Management of the Affairs of the Eaſt India Company, and of the Britiſh Poſſeſſions in India, and for eſtabliſhing a Court of Judicature for the more ſpeedy and effectual Trial of Perſons accuſed of Offences committed in the Eaſt Indies.' "That, in preparing the ſame, they do never loſe ſight of the effect, which any meaſure, to be adopted for the good government of our poſſeſſions in India, may have on our own conſtitution and our dearеſt intereſts at home; and particularly that in amending the ſaid Act, they do take care that no part thereof ſhall be con-

"firmed

" firmed or re-enacted, by which the un-
" alienable birth-right of every Britiſh ſub-
" ject to a trial by jury, as declared in
" Magna Charta, ſhall be taken away or
" impaired."

This Motion was rejected,

Ayes 16.
Noes 85.

HOUSE

## HOUSE OF COMMONS,

*Monday, 20th March, 1786.*

BILL to explain and amend the India Bill of 1784, read a ſecond time. — Mr. Dundas moved, that it ſhould be referred to a Committee of the whole Houſe, on Wedneſday the 22d. — Mr. Jolliffe moved an amendment to the Motion, viz. that inſtead of Wedneſday, it ſhould ſtand for Friday the 24th. The Queſtion being put on this Amendment, the Houſe divided,

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|---|---|
| For the Amendment | 29. |
| Againſt it | 53. |

Mr. Dundas's Motion was then put and carried.

# APPENDIX.

## No. I.

THE Trial by Jury, or the Country, *per patriam*, is alſo that trial by the Peers of every Engliſhman, which, as the grand bulwark of his liberties, is ſecured to him by the great charter, "*nullus liber homo capia-*" *tur, vel impriſonetur, aut exulet, aut ali-*" *quo alio modo deſtruatur, niſi per legale ju-*" *dicium parium ſuorum, vel per legem* " *Terræ.*"

The founders of the Engliſh laws have with excellent forecaſt contrived, that the truth of every accuſation, whether preferred in the ſhape of indictment, information, or appeal, ſhould afterwards be confirmed by the unanimous ſuffrage of twelve of his equals, and neighbours, indifferently choſen, and ſuperior to all ſuſpicion. So that the liberties of England cannot but ſubſiſt, ſo long as this PALLADIUM remains ſacred and inviolate, not only from all open attacks, (which none will be ſo hardy as to make) but

but alſo from all ſecret machinations, which may ſap and undermine it; by introducing new and arbitrary methods of trial by Juſtices of the Peace, Commiſſioners of the Revenue, and Courts of Conſcience. And however convenient theſe may appear at firſt (as doubtleſs all arbitrary powers, well executed, are the moſt *convenient*) yet let it be again remembered, that delays and little inconveniencies in the forms of Juſtice, are the price that all free nations muſt pay for their liberty in more ſubſtantial matters; that theſe inroads upon THIS SACRED BULWARK OF THE NATION are fundamentally oppoſite to the ſpirit of our conſtitution; and that, though begun in trifles, the precedent may gradually increaſe and ſpread, to the utter diſuſe of juries in queſtions of the moſt momentous concern.

BLACKSTONE.

APPEN-

# APPENDIX.

## No. II.

UNA contradizione fralle leggi e i ſentimenti naturali all' uomo, naſce d'ai giuramenti, che ſi eſigono dal reo, acciocché ſia un uomo veridico, quando ha il maſſimo intereſſe di eſſer falſo; quaſi che l' uomo poteſſe giurar da dovero di contribuire alla propria diſtruzione, quaſi che la religione non taceſſe nella maggior parte degli uomini quando parla l'intereſſe.

*Beccaria*, cap. 18.